IN THE HIGH COURT OF BOMBAY AT GOA.

CIVIL REVISION APPLICATION NO. 63 OF 2002.

Shri Subhash Uttam Naik
Adpaikar through his duly
constituted Attorney
Shri Uttam Venkatesh Naik,
r/o H. No. 383,
Shantinagar, Navelim. ... Applicant.

Versus

Smt. Amita Achut Kundaikar
alias Shubha Subash Naik
Adpaikar, r/o H. No. 108,
Comba, Margao. ... Respondent.

Mr. C.A. Ferreira, Advocate for the Applicant.

Mr. N. Sardessai, Advocate for the Respondent.

Coram: P.V. HARDAS, J.

Date: 21st March 2003.

ORAL JUDGMENT.

This Civil Revision Application has been filed by the applicant, who is the original plaintiff in Special Civil Suit No. 130/2000/II, pending on the file of the IInd Additional Civil Judge, Senior Division, Margao, whereby the learned trial Court permitted the present respondent/original defendant to file counter-claim

2. At this stage it is needless to refer to the facts as Mr. Ferreira, the learned counsel appearing on behalf of the applicant, has very fairly stated that he does not oppose the application of the respondent/defendant seeking permission to file the

counter-claim. In view of this, the learned counsel for the applicant/plaintiff states that the respondent/defendant can be permitted to file the counter-claim within 15 days from today. He, however, takes exception to certain observations made in the Order, dated 3rd October 2001, passed by the learned trial Court, particularly in paragraph 6 thereof, in respect of the interpretation of Articles 29 and 30 of the Law of Divorce, 1910. According to the learned trial Court, Article 30 does not prescribe the stage as to when the maintenance application can be preferred by either of the spouses. It is needless, at this stage, to dilate on this point, as the learned counsel for the applicant seeks to withdraw his objection to the filing of the counter-claim by the respondent/defendant.

3. The parties have, accordingly, arrived at a consensus and the learned counsel appearing for the respondent/defendant submits that after the filing of the counter-claim, the applicant/plaintiff can be afforded an opportunity of filing a written statement to the counter-claim and in order to obviate any prejudice, which may have been caused to the applicant/plaintiff in the delayed presentation of the counter-claim, the applicant/plaintiff can be permitted to examine either himself or such other witnesses as the applicant/plaintiff may choose to do in defence of the

counter-claim.

4. Accordingly, the respondent/defendant is permitted to file the counter-claim and the counter-claim shall be filed within 15 days from today. The learned trial Court shall afford an opportunity to the applicant/plaintiff of leading such other additional evidence as the applicant/plaintiff may desire for rebutting the averments made in the counter-claim. The trial Court shall not be influenced by any of the observations made in the Order impugned in the present Civil Revision Application. The learned counsel for the respondent/defendant states that the counter-claim shall be limited to the claim for maintenance. The learned counsel appearing on behalf of the respondent/defendant states that in consideration of the respondent/defendant being permitted to file the counter-claim, all the averments and prayers in respect of maintenance will be withdrawn in Special Civil Suit No. 12/2001/A.

5. The Civil Revision Application is, accordingly, disposed of with no order as to costs.

(P.V. HARDAS)
JUDGE.

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